

1
2
3
4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF WASHINGTON

6 RANDALL MAURICE PETERSON,

7 Movant,

8 -vs-

9 UNITED STATES OF AMERICA,

10 Respondent.
11

No. 2:15-CR-0087-WFN-1

ORDER DENYING § 2255 MOTION

12 Before the Court is Movant's 28 U.S.C. § 2255 Motion to Vacate, Set Aside or
13 Correct Sentence. ECF No. 64. The Motion is submitted by Randall Maurice Peterson,
14 who is appearing *pro se* in these proceedings.

15 **BACKGROUND**

16 Mr. Peterson was indicted on September 1, 2015, for: (1) Production of Child
17 Pornography; (2) Receipt of Child Pornography; and (3) Possession of Child Pornography.
18 Mr. Peterson pled guilty to Count 3 on March 9, 2016. Counts 1 and 2 have mandatory
19 minimum sentences for 15 and 5 years, respectively, if convicted. In the Plea Agreement,
20 the Government agreed to dismiss Counts 1 and 2 in return for several concessions
21 including admitting guilt to Count 3 and waiver of appeal of the conviction and sentence
22 as a part of the Plea Agreement. Mr. Peterson pled guilty and the Court sentenced him in
23 accordance with the Rule 11(c)(1)(C) agreed recommendation.

24 **DISCUSSION**

25 To gain relief, Mr. Peterson must establish that (1) he is in custody under a sentence
26 of this federal court; (2) his request for relief was timely; and (3) the court lacked either
27 personal or subject matter jurisdiction, the conviction or sentence is unconstitutional, the
28 conviction or sentence violates federal law, or the sentence or judgment is otherwise open

1 to collateral attack. 28 U.S.C. § 2255. Mr. Peterson satisfied the first two requirements.
2 To meet his burden on the third prong he alleges several constitutional violations ranging
3 from violation of the Fourteenth Amendment to cruel and unusual punishment. Each of
4 these alleged violations stem from Mr. Peterson's primary concern that his counsel
5 provided ineffective assistance by failing to file a motion to suppress evidence. Mr.
6 Peterson contends that had such a motion been filed, it would have been granted and that
7 the charges would have been dismissed.¹

8 In order to prevail on his ineffective assistance claims, Mr. Peterson must prove that
9 counsel's performance was deficient and that he was prejudiced by this deficient
10 performance. *United States v. Strickland*, 466 U.S. 668, 687 (1984). Courts must "indulge
11 a strong presumption that counsel's conduct falls within the wide range of reasonable
12 professional assistance; that is, the defendant must overcome the presumption that, under
13 the circumstances, the challenged action might be considered sound trial strategy."
14 *Strickland*, 466 U.S. at 689. "A fair assessment of attorney performance requires that
15 every effort be made to eliminate the distorting effects of hindsight, to reconstruct the
16 circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's
17 perspective at the time." *Id.* at 689 (internal citations omitted). In order to show prejudice,
18 Mr. Peterson must show that but for counsel's errors the results of the proceeding would
19 have been different. *Id.* at 694.

20
21 ¹ To the extent that Mr. Peterson intends to claim constitutional violations
22 independent of the primary ineffective assistance of counsel claim, the Court notes that
23 Mr. Peterson waived his right to file a § 2255 Motion in the Plea Agreement. "Defendant
24 further expressly waives his/her right to file any post-conviction motion attacking his/her
25 conviction and sentence, including a motion pursuant to 28 U.S.C. § 2255, except one
26 based upon ineffective assistance of counsel based on information not now known by
27 Defendant and which, in the exercise of due diligence, could not be known by Defendant
28 by the time the Court imposes the sentence." Plea Agreement, pg. 11, ¶ 14, ECF No. 44.

1 Contrary to Mr. Peterson's claim that his "attorney never told me that the evidence
2 could be thrown out if we attacked it on grounds of illegal search and seizure," the Court
3 notes that a Motion to Suppress was filed before the Court alleging that "Law enforcement
4 searched Randall Peterson's SD card without a warrant . . . Thus the warrantless search
5 violated Randall Person's Fourth Amendment right against unreasonable searches and
6 seizures." Defendant's Motion to Suppress Evidence, pg. 1, ECF No. 34. Further, the
7 record reflects that Mr. Peterson was aware such a motion was filed. At a hearing on
8 February 17, 2016, where Mr. Peterson was present and in the custody of the United States
9 Marshals Service, defense counsel indicated on the record that an evidentiary hearing on
10 the pending Motion to Suppress would be necessary if the parties were unable to resolve
11 the case by plea agreement. See ECF No. 38. Mr. Peterson seems to acknowledge that he
12 was aware of the Motion as he indicates in his § 2255 Motion that he was not aware of the
13 initial lack of warrant "until it was mentioned in court." Defendant's Motion Under
14 28 U.S.C. § 2255, p. 4, ECF No. 64. Less than a month later Mr. Peterson entered a plea
15 of guilty to possession of child pornography. His counsel negotiated a deal with the
16 Government that involved not only dismissing the two more serious counts pending in
17 Federal court, but also allowed Mr. Peterson to withdraw from his Plea Agreement if the
18 state charges were not dropped.

19 Contrary to Mr. Peterson's assertions, there is no guarantee that the Court would
20 have granted the Motion to Suppress Evidence. His counsel made a sound decision to use
21 the possibility that the Court could toss out the SD card to negotiate a plea deal that
22 weighed heavily in Mr. Peterson's favor. Mr. Peterson clearly agreed with the decision at
23 the time because he entered a guilty plea while the Motion to Suppress was still pending.

24 **CERTIFICATE OF APPEALABILITY**

25 An appeal of this Order may not be taken unless this Court or a circuit justice issues
26 a certificate of appealability finding that "the applicant has made a substantial showing
27 of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (West 2013). This requires
28 a showing that "reasonable jurists would find the district Court's assessment of the

1 constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
2 Based on the Court's preceding analysis, the Court concludes that jurists of reason would
3 not differ with the Court's conclusion. Thus a certificate of appealability should not issue.

4 The Court has reviewed the file and Mr. Peterson's Motion and is fully informed.
5 Accordingly,

6 **IT IS ORDERED** that Mr. Peterson's Motion to Vacate, Set Aside or Correct
7 Sentence by a Person in Federal Custody Pursuant to 28 U.S.C. § 2255, filed January 11,
8 2017, **ECF No. 64**, is **DENIED**.

9 The District Court Executive is directed to:

- 10 • File this Order,
11 • Provide copies to counsel and *pro se* Movant
12 • Inform the Ninth Circuit Court of Appeals that if the Movant files a Notice of
13 Appeal that a certificate of appealability is **DENIED; AND**
14 • **CLOSE** the corresponding civil file, 2:17-CV-0016-WFN.

15 **DATED** this 3rd day of May, 2017.

16
17 s/ Wm. Fremming Nielsen
18 WM. FREMMING NIELSEN
19 SENIOR UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26
27
28

04-25-17